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in the

Supreme Court

of the

United States

OCTOBER TERM, 1970

No. 1260

STATE OF ISRAEL, a sovereign nation,
Petitioner,

vs.

THE MOTOR VESSEL "NILI", etc., ET AL.,
Respondents.

PETITIONER'S REPLY BRIEF

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RICHARD F. RALPH
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MIAMI REVIEW — [illegible] — [illegible]

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OPINIONS BELOW

The opinion of the Court of Appeals is now reported in 435 F2d 242 (Adv. No. 2, February 22, 1971).

ARGUMENT

The opinion and judgment of the Court of Appeals in this cause is the first such holding involving a posted notice of the mortgage, foreign or domestic, also setting forth the lien preclusionary clause. All prior decisions, including those recognizing the validity of lien preclusionary clauses when included in the posted notice of mortgage, have dealt with the question only in dictum. The opinion and judgment of the Court of Appeals in this cause has for the first time squarely decided this important question of far reaching adverse affect on the security of ship mortgages which has not been, but should be, settled by this court.

The question presented deals with whether or not respondents have liens. If respondents did not acquire maritime liens by virtue of the posted lien preclusionary clause of the mortgage then no priority question arises in reference to Petitioner's ship mortgage lien.

The "unclean hands" observation of the Court of Appeals begs the question; was not before the Court of Appeals; and has no foundation in fact or law because:

1. If the posted lien preclusionary clause of Petitioner's mortgage is valid and effective, respondents having notice of same were not prejudiced by the absence of an earlier foreclosure or alleged existence of a charter. Rather their position arises from their choosing to ignore a lien preclusionary clause of which posted notice existed on the vessel. This was in the face of long standing dictum of two panels of the Fifth Circuit Court of Appeals to the effect such clauses when posted were effective and the absence of such posting in all other reported decisions.

2. The question of "unclean hands" or like equitable defense was not presented to or decided by the District Court and was not before the Court of Appeals on its acceptance of Petitioner's interlocutory appeal presenting the same legal question as now posed in its Petition for Certiorari.

3. There is not one iota of evidence that Respondent T. Arison & Co., Inc., or anyone else was in fact or law charterer of the vessel subsequent to the termination of the Tropical Cruise Lines' charterparty on September 16, 1966, or that petitioner had any knowledge of any such alleged charter. The dichotomy appears from the opinion of the Court of Appeals wherein during the period subsequent to September 16, 1966 T. Arison & Co., Inc., is variously referred to as the vessel owner's agent, (n.4, Apdx. 35, 435 F2d 244) and as charterer (Apdx. 38, 435 F2d 245).

The dichotomy also appears from Respondent T. Arison & Co., Inc.'s brief in opposition where in argument (p. 8) it seeks to assert an "unclean hands" holding of the Court of Appeals predicated upon Respondent Arison being a charterer, which in its statement of facts (p. 3) is first stated to be the owner's managing agent and thereafter lapse into an unsupported statement the vessel was chartered to T. Arison & Co., Inc. and with the knowledge of Petitioner (p. 8).

The brief in opposition of Seahost Corporation and other respondents (pp. 1-2) recognizes the vessel owner was operating subsequent to September 16, 1966.

4. Sworn deposition testimony of Respondent T. Arison & Co., Inc., through its President Ted Arison, taken in the cause before any of the appeals in this cause, clearly sets forth that T. Arison & Co., Inc. was the vessel's general agent. The same deposition discloses that T. Arison & Co., Inc. entered into a sham charterparty with the owner which together with charter hire notes were assigned to private London bankers in substitution for a prior security given them by an interrelated corporation with that owning the Nili. A private letter exchanged between the Nili owner and T. Arison & Co., Inc confirming the charterparty as a sham is an identified exhibit to the deposition. There is no evidence Petitioner was aware of this sham charterparty and it was in fact not aware of it. T. Arison & Co., Inc. and the other Respondents are strange beneficiaries of a gratuitous consideration lacking in jurisdiction by the Court of Appeals on a record properly limited to the question accepted by it, which also has the effect of rendering the "clean hands" observation fairly comprised within the question presented and the meaning of Rule 23, 1 (c).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of Petitioner's Reply Brief was mailed postage prepaid to Arthur Roth, Attorney for Seahost Corporation and other respondents, 1111 Ainsley Building, Miami, Florida 33132, and to Heiman and Crary, P.A., attorneys for T. Arison & Co., Inc., 202 Eleven Fifty Bldg., 1150 S.W. First Street, Miami, Florida 33130 this 12th day of March, 1971.

RICHARD F. RALPH